



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: November 27, 2013

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary *Ben Brancel*
Sandy Chalmers, Administrator, Trade and Consumer Protection Division *Sandy Chalmers*

SUBJECT: ATCP 136 Mobile Air Conditioners; Reclaiming or Recycling Refrigerant (Hearing Draft)

PRESENTED BY: Judy Cardin and Staff

REQUESTED ACTION:

At the December 10, 2013 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to authorize public hearings on a proposed rule (copy attached) related to mobile air conditioners. This rule contains environmental protections related to allowable refrigerants and the handling, disposal, registration and training requirements for business operators and technicians. The proposed rule will eliminate the \$120 annual registration fee for operators of mobile air conditioning businesses, harmonize training requirements with EPA to eliminate duplication, and remove outdated references to statutes that no longer exist.

SUMMARY:

Background

The existing ATCP 136 establishes requirements for buying, selling, reclaiming and recycling ozone depleting refrigerants. The requirements are consistent with those under federal law. The rule also requires businesses that install, repair or service mobile air conditioners to pay an annual registration fee and obtain an annual registration certificate from the department. The rule requires businesses to register their mobile air service technicians and technicians to successfully complete a department-approved training course or satisfy other training requirements.

Prior to 2011, Wisconsin was the only state where the sale of small cans of substitute, non-ozone depleting refrigerant was prohibited. In 2011, the Legislature modified s. 100.45, Stats., to allow the sale of these products. One result of the law change was that the Wisconsin specific training became redundant with the EPA required training. Mobile air conditioner repair businesses also report they have lost business to do it yourselves who can now purchase supplies to make the repairs themselves.

Agriculture generates \$59 billion for Wisconsin

Rule Content

This proposed rule does all of the following:

- Eliminates the mobile air conditioner repair business \$120 annual registration fee. Surcharge fees are maintained.
- Modifies mobile air conditioner repair technician training requirements.
- Removes references to obsolete Department of Safety and Professional Services (DSPS) licensing requirements.

DATCP proposes to eliminate the \$120 annual registration fee and streamline the training requirements currently required under this rule. These modifications will harmonize DATCP's rule with federal law and reduce overall regulatory burdens. The proposed rule also removes references to obsolete DSPS licensing requirements and makes other minor modifications needed to ensure uniformity between the statute and rule. Surcharge fees for operating without a registration are required under s. 100.45(5m), Stats., and are not affected by this rule change.

Summary of, and comparison with, existing or proposed federal statutes and regulations.

At the federal level, the Environmental Protection Agency (EPA) requires technicians to be trained and certified by an EPA approved organization. The training must cover specific content areas, and technicians must pass a test demonstrating competency to be certified. Under the existing rule, the EPA approved course does not automatically meet the DATCP training standards. Therefore, a technician seeking certification in Wisconsin who has already successfully completed the EPA approved course must also (in most circumstances) complete a DATCP approved course. Under the proposed rule, a technician who completes the EPA approved course would meet the DATCP training requirements.

This proposed rule is consistent with federal laws related to buying, selling, reclaiming, and recycling ozone-depleting refrigerants.

Comparison with rules in adjacent states

The EPA administers the mobile air conditioner regulations used in adjacent states. Wisconsin has adopted EPA's regulations into state law to improve the ability to enforce the regulations. The existing ATCP 136 exceeds the EPA training requirements. The proposed rule brings Wisconsin's training requirements into conformity with the EPA training regulations used in neighboring states.

Summary of Factual Data and Analytical Methodologies

The DATCP Weights and Measures Bureau administers Wisconsin's mobile air conditioning registration program. In 2013, 3500 operators of mobile air conditioning repair businesses registered with DATCP. At a cost of \$120 per registration, the cumulative cost for these businesses to register with the state was \$420,000. In addition, the DATCP collected another \$7000 in statutorily required surcharge fees on late registrations. These businesses also registered

and submitted Wisconsin required training credentials for 11,000 mobile air conditioning repair technicians.

Effect on Small Business

This proposed rule eliminates registration fees and modifies training requirements. Businesses will benefit from the reduction in fee and training expenses. The rule would save approximately 3,500 businesses a \$120 annual registration fee for a total savings of about \$420,000 each year. In addition, the 11,000 technicians who register annually with the department would be able to use their EPA approved training course to meet Wisconsin's training requirements. This cost savings is indeterminate, but would save technicians and businesses both training registration fees and time away from their jobs. This rule will not have a negative effect on small business.

Environmental Impact

This proposed rule changes do not have an environmental impact.

Next Steps

If the Board authorizes public hearings on this rule, DATCP will refer a copy of the rule to the Legislative Council Rules Clearinghouse and publish a hearing notice in the Wisconsin Administrative Register. DATCP will hold public hearings on the dates and at the locations specified in the hearing notice. The hearing dates and locations have not yet been determined.

Following the public hearings, DATCP will prepare a final draft rule for the Board's consideration. If the Board approves a final draft rule, DATCP will transmit that final draft rule to the Governor for his written approval and then to the Legislature for review by appropriate legislative committees. If the Legislature takes no action to stop the rule, the Secretary will sign the final rulemaking order and transmit it for publication.

**PROPOSED ORDER
OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

1 The Wisconsin department of agriculture, trade and consumer protection proposes the following
2 rule *to repeal* ATCP 136.02 (4) (d), ATCP 136.10 (2) (c), ATCP 136.10 (3) (a) 2., and ATCP
3 136.10 (3) (b) 4., *to amend* ATCP 136.02 (4) (g) (Note), ATCP 136.02 (5), ATCP 136.02 (7),
4 ATCP 136.02 (8) (a), ATCP 136.08 (1), ATCP 136.08 (7) (Note), ATCP 136.12 (1) (b) (Note),
5 and ATCP 136.12 (2) (Note); *relating to* mobile air conditioners, reclaiming or recycling
6 refrigerant.

**Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection**

This rule makes changes to an existing rule, ATCP 136, Mobile Air Conditioners; Recycling and Reclaiming of Refrigerants, administered by the department of Agriculture, Trade and Consumer Protection ("DATCP"). The existing rule contains environmental protections related to allowable refrigerants and their handling and disposal and registration and training requirements for business operators and technicians. This rule will eliminate the \$120 annual registration fee for operators of mobile air conditioning businesses, harmonize training requirements with EPA to eliminate duplication, and remove outdated references to statutes that no longer exist.

Statutes Interpreted

Statutes Interpreted: s. 100.45, Wis. Stats.

Statutory Authority

Statutory Authority: ss. 93.07 (1), 100.20 (2) and 100.45 (5) (a), Wis. Stats.

Explanation of Statutory Authority

DATCP has broad general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction.

DATCP has broad authority under s. 100.20 (2), Stats., to write general orders to forbid methods of competition in business or trade practices in business which are determined by the department to be unfair or to prescribe methods of competition in business or trade practices in business which are determined by the department to be fair.

DATCP has specific authority under s. 100.45 (5) (a), Stats., to promulgate rules establishing standards for recycled refrigerant based on recognized national industry standards and qualifications for individuals and businesses that service mobile air conditioners.

Related Statutes and Rules

This proposed rule modifies an existing rule chapter, Chapter ATCP 136, which regulates the repair or service of motor vehicle air conditioners and trailer refrigeration equipment. This rule relates to s. 100.45, Stats., Mobile Air Conditioners.

Plain Language Analysis

Background

The existing ATCP 136 establishes requirements for buying, selling, reclaiming and recycling ozone depleting refrigerants. The requirements are consistent with those under federal law. The rule also requires businesses that install, repair or service mobile air conditioners to pay an annual registration fee and obtain an annual registration certificate from the department. The rule requires businesses to register their mobile air service technicians and technicians to successfully complete a department approved training course or satisfy other training requirements.

Prior to 2011, Wisconsin was the only state where the sale of the small cans of substitute, non-ozone depleting refrigerant was prohibited. In 2011, the Legislature modified s. 100.45, Stats., to allow the sale of these products. One result of the law change was that the Wisconsin specific training became redundant with the EPA required training. Mobile air conditioner repair businesses also report they have lost business to do it yourselves who can now purchase supplies to make the repairs themselves.

Rule Content

This rule does all of the following:

- Eliminates the mobile air conditioner repair business \$120 annual registration fee. Surcharge fees are maintained.
- Modifies mobile air conditioner repair technician training requirements.
- Removes references to obsolete Department of Safety and Professional Services (DSPS) licensing requirements.

DATCP proposes to eliminate the \$120 annual registration fee and streamline the training requirements currently required under this rule. These modifications will harmonize DATCP's rule with federal law and reduce overall regulatory burdens. The proposed rule also removes references to obsolete DSPS licensing requirements and makes other minor modifications needed to ensure uniformity between the statute and rule. Surcharge fees for operating without a registration are required under s. 100.45 (5m), Stats., and are not affected by this rule change.

Summary of, and comparison with, existing or proposed federal statutes and regulations.

At the federal level, the Environmental Protection Agency (EPA) requires technicians to be trained and certified by an EPA approved organization. The training must cover specific content areas, and technicians must pass a test demonstrating competency to be certified. Under the existing rule, the EPA approved course does not automatically meet the DATCP training standards. Therefore, a technician seeking certification in Wisconsin who has already successfully completed the EPA approved course must also (in most circumstances) complete a DATCP approved course. Under the proposed rule, a technician who completes the EPA approved course would meet the DATCP training requirements.

This rule is consistent with federal laws related to buying, selling, reclaiming, and recycling ozone-depleting refrigerants.

Comparison with rules in adjacent states

The EPA administers the mobile air conditioner regulations used in adjacent states. Wisconsin has adopted EPA's regulations into state law to improve the ability to enforce the regulations. The existing ATCP 136 exceeds the EPA training requirements. The proposed rule brings Wisconsin's training requirements into conformity with the EPA training regulations used in neighboring states.

Summary of Factual Data and Analytical Methodologies

This rule does not depend on a complex analysis of data. The 2011 Legislative change to the statute prompted the change to this rule. This rule harmonizes Wisconsin's training requirements with federal law and improves consistency with surrounding states. The department has determined it has adequate revenues to administer the program with the fee reduction.

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis

The DATCP Weights and Measures Bureau administers Wisconsin's mobile air conditioning registration program. In 2013, 3500 operators of mobile air conditioning repair businesses registered with DATCP. At a cost of \$120 per registration, the cumulative cost for these businesses to register with the state was \$420,000. In addition, the DATCP collected another \$7000 in statutorily required surcharge fees on late registrations. These businesses also registered and submitted Wisconsin required training credentials for 11,000 mobile air conditioning repair technicians.

Effect on Small Business

This proposed rule eliminates registration fees and modifies training requirements. Businesses will benefit from the reduction in fee and training expenses. The rule would save approximately 3,500 businesses a \$120 annual registration fee for a total savings of about \$420,000 each year. In addition, the 11,000 technicians who register annually with the department would be able to use their EPA approved training course to meet Wisconsin's training requirements. This cost savings is indeterminate, but would save technicians and businesses both training registration fees and time away from their jobs. This rule will not have a negative effect on small business.

Environmental Impact

The proposed rule changes do not have an environmental impact.

DATCP Contact

Jennifer Heaton-Amrhein
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-5164
E-Mail: Jennifer.heatonamrhein@wisconsin.gov

Place Where Comments are to be Submitted and Deadline for Submission

Questions and comments related to this rule may be directed to:

Jennifer Heaton-Amrhein
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-5164
E-Mail: Jennifer.heatonamrhein@wisconsin.gov

7 **SECTION 1.** ATCP 136.02 (4) (d) is repealed.

8 **SECTION 2.** ATCP 136.02 (4) (g) (Note) is amended to read:

9 **Note:** You may obtain an application form by writing to OZONE, Consumer Protection

10 Bureau, Weights and Measures Bureau, P.O. Box 8911, Madison, WI 53708-8911.

11 **SECTION 3.** ATCP 136.02 (5) is amended to read:

ATCP 136.02 (5) SURCHARGE FOR OPERATING WITHOUT A REGISTRATION CERTIFICATE. An applicant for a business registration certificate shall pay a registration surcharge fee ~~surcharge~~ if the department determines that, within one year before submitting the application, the applicant operated in violation of sub. (1). The applicant shall pay a surcharge of \$160 for each location at which the applicant operated in violation of sub. (1), regardless of whether the applicant still operates at that location.

SECTION 4. ATCP 136.02 (7) is amended to read:

ATCP 136.02 (7) RENEWING A REGISTRATION CERTIFICATE. A person holding a business registration certificate may annually renew that certificate by submitting a renewal application on a form provided by the department. The renewal application shall include all of the information required under sub. (4); ~~and shall include a renewal fee of \$120 for each business location.~~

SECTION 5. ATCP 136.02 (8) (a) is amended to read:

ATCP 136.02 (8) (a) Failing to pay a registration surcharge fee, or paying with a worthless check.

SECTION 6. ATCP 136.08 (1) TRAINING REQUIRED is amended to read:

ATCP 136.08 (1) TRAINING REQUIRED. A business operator may not register a technician under s. ATCP 136.04 unless the technician has successfully completed a department approved training program under sub. (2) or a training program approved by the federal environmental protection agency under 40 CFR 82.40 or 40 CFR 82.161. ~~This training requirement does not apply if the technician meets the following applicable requirements:~~

(a) ~~The technician has done all of the following if the technician will be servicing mobile air conditioners:~~

~~1. Serviced mobile air conditioners in another state within the previous 5 years.~~

35 2. ~~Successfully completed a training course approved by the United States environmental~~
36 ~~protection agency under 40 CFR 82.40.~~

37 3. ~~Successfully completed an open book examination administered by the department.~~

38 (b). ~~The technician has done all of the following if the technician will be servicing trailer~~
39 ~~refrigeration equipment:~~

40 1. ~~Serviced trailer refrigeration equipment in another state within the previous 5 years.~~

41 2. ~~Successfully completed a training course approved by the United States environmental~~
42 ~~protection agency under 40 CFR 82.161.~~

43 3. ~~Successfully completed an open book examination administered by the department.~~

44 SECTION 7. ATCP 136.08 (7) (Note) is amended to read:

45 Note: You may obtain a list of approved training programs by writing to OZONE,
46 ~~Consumer Protection Bureau, Weights and Measures Bureau, P.O. Box 8911, Madison, WI~~
47 ~~53708-8911.~~

48 SECTION 8. ATCP 136.10 (2) (c) is repealed.

49 SECTION 9. ATCP 136.10 (3) (a) 2. is repealed.

50 SECTION 10. ATCP 136.10 (3) (b) 4. is repealed.

51 SECTION 11. ATCP 136.12 (1) (b) (Note) is amended to read:

52 Note: You may obtain a list of approved recovery and recycling equipment by writing to
53 ~~OZONE, Consumer Protection Bureau Weights and Measures Bureau, P.O. Box 8911, Madison,~~
54 ~~WI 53708-8911.~~

55 SECTION 12. ATCP 136.12 (2) (Note) is amended to read:

Note: You may obtain a list of approved independent testing organizations by writing to OZONE, ~~Consumer Protection Bureau~~ Weights and Measures Bureau, P.O. Box 8911, Madison, WI 53708-8911.

SECTION 13. EFFECTIVE DATE: This rule takes effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22(2)(intro.), Stats.

Dated this _____ day of _____, 2013.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: _____
Ben Brancel
Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

Initial Regulatory Flexibility Analysis

Rule Subject: Mobile Air Conditioners; reclaiming and recycling refrigerants
Adm. Code Reference: ATCP 136
Rules Clearinghouse #: Not yet assigned
DATCP Docket #: 13-R-11

Rule Summary

The rule interprets s. 100.45, Stats., the Mobile Air Conditioner; reclaiming and recycling refrigerants law administered by the Department of Agriculture, Trade and Consumer Protection ("DATCP"). Chapter ATCP 136 establishes requirements for buying, selling, reclaiming and recycling ozone depleting refrigerants. The requirements are consistent with those under federal law. The rule also requires businesses that install, repair or service mobile air conditioners to pay an annual registration fee and obtain an annual registration certificate from the department. The rule requires businesses to register their mobile air service technicians and technicians to successfully complete a department approved training course or satisfy other training requirements.

Rule Content

The proposed rule does all of the following:

- Eliminates the mobile air conditioner repair business \$120 annual registration fee. Surcharge fees are maintained.
- Modifies mobile air conditioner repair technician training requirements.
- Removes references to obsolete Department of Safety and Professional Services (DSPS) licensing requirements.

DATCP proposes to eliminate the \$120 annual registration fee and streamline the training requirements currently required under this rule. These modifications will harmonize DATCP's rule with federal law and reduce overall regulatory burdens. The proposed rule also removes references to obsolete DSPS licensing requirements and makes other minor modifications needed to ensure uniformity between the statute and rule. Surcharge fees for operating without a registration are required under s. 100.45(5m), Stats., and are not affected by this rule change.

Small Business Affected

The proposed rule will have a positive impact on operators of mobile air conditioner repair businesses and will not have a negative effect on businesses. This rule affects businesses in the following ways:

Eliminates the annual registration fee

- Under the proposed rule, the \$120 annual registration fee for operators of mobile air conditioner repair businesses will be eliminated. With approximately 3500 businesses statewide, this will result in a savings of \$420,000 annually for small businesses.

Eliminates duplicative training requirements

- Prior to 2011, Wisconsin was the only state that prohibited the sale of small cans of non-ozone depleting ("substitute") refrigerant. For this reason, the state had Wisconsin specific technician training requirements. With the change in law that now allows the sale of small cans of substitute refrigerant, the Wisconsin specific training is no longer needed. Under this proposed rule, technicians who pass an EPA approved training course will meet Wisconsin's training requirement. This will save businesses and technicians an indeterminate amount of time and money as the technicians will no longer have to complete an additional training course.

Reporting, Bookkeeping and other Procedures

The proposed rule does not change existing reporting, bookkeeping or other procedures in the proposed rule for small businesses.

Professional Skills Required

The proposed rule eliminates the duplicative training requirements for technicians of mobile air conditioner businesses. However, technicians must still complete an approved training course.

Accommodation for Small Business

Many of the businesses affected by this rule are "small businesses." This proposed rule does not make special exceptions for small businesses because the program encompasses mobile air conditioner repair businesses of all sizes. The proposed registration fee and technician training rule changes will benefit large and small businesses alike.

Conclusion

This proposed rule will generally benefit affected businesses, including "small businesses." This rule will not have a negative effect on "small business," and is not subject to the delayed "small business" effective date provided in s. 227.22(2)(e), Stats.

Dated this 25 day of November, 20 13.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 

Sandy Chalmers, Administrator
Division of Trade and Consumer Protection

ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

☐ Original ☐ Updated ☒ Corrected

Administrative Rule Chapter, Title and Number

Ch. ATCP 136, Mobile Air Conditioners; Reclaiming or Recycling Refrigerant

Subject

Mobile Air Conditioners, fees and training

Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☒ SEG SEG-S

Chapter 20, Stats. Appropriations Affected

20.115(1)(hm)

Fiscal Effect of Implementing the Rule

☐ No Fiscal Effect

☐ Indeterminate

☐ Increase Existing Revenues

☒ Decrease Existing Revenues

☐ Increase Costs

☒ Could Absorb Within Agency's Budget

☐ Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

☐ State's Economy

☐ Local Government Units

☒ Specific Businesses/Sectors

☐ Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

☐ Yes ☒ No

Policy Problem Addressed by the Rule

ATCP 136, Wisconsin's mobile air conditioner; recycling and reclaiming refrigerant rule, contains requirements that duplicate federal requirements. This rule revision is needed to harmonize Wisconsin's rules with federal regulations and reduce costs for businesses.

This proposed rule will modify the existing ch. ATCP 136, Wis. Adm. Code in three main areas. The rule:

- Eliminates unneeded business registration fees; surcharge fees required by statute that apply to late registrations will continue.
- Harmonizes current rules with existing federal regulations related to training of mobile air conditioner technicians.
- Removes references to obsolete Department of Safety and Professional Services (DSPA) regulations.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

This proposed rule updates current rules related to mobile air conditioners. This rule modifies existing rule language to eliminate registration fees, harmonizes state training requirements with existing federal requirements, and makes needed administrative changes. There will be cost savings for the regulated community as a result of these changes.

Local Governments

This rule will not impact local governments. Local governments will not have any implementation or

compliance costs.

Mobile Air Conditioning Businesses

This rule will impact mobile air conditioning businesses. The changes to the rule are advantageous to businesses, including small businesses. These changes are discussed under the "Benefits" section of this analysis.

This proposed rule eliminates registration fees and eliminates duplicate training requirements. These changes benefit businesses and their technicians, with no negative effects on consumers or the environment.

Utility Rate Payers

The rule will have no impact on utility rate payers.

General Public

This rule will have no impact on the general public.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Benefits

This rule will benefit mobile air conditioner repair businesses and technicians.

Mobile Air Conditioner Repair Technicians

Mobile air conditioner repair technicians will benefit from this rule because they will no longer need to take a Wisconsin specific training course to maintain their registration in Wisconsin. Under this rule, completion of the federally approved training program will satisfy Wisconsin's training requirements.

Mobile Air Conditioner Repair Businesses

Mobile air conditioner repair businesses will benefit as this rule will eliminate the annual registration fee and additional training requirements for technicians. This will save each business location a minimum of \$120 annually, plus associated administrative costs.

Alternatives

This rule will eliminate fees and ensure regulatory consistency between Wisconsin and federal law. If DATCP does not adopt this rule, Wisconsin will continue to require training for technicians that duplicates federal training requirements. In addition, if DATCP does not adopt this rule, businesses will continue to be required to pay the \$120 annual registration fee to the department. The alternative to adopting this rule is to maintain the existing ATCP 136 requirements.

Long Range Implications of Implementing the Rule

Long-term, implementing the rule will benefit business. The rule modifications will save businesses a minimum of \$120 annually for each business location currently required to be registered, or approximately \$420,000 annually, statewide. In addition, businesses will no longer need to pay for technicians to complete (or ensure they have completed) a Wisconsin specific training program. This rule will have no impact on the environment, as existing environmental protections in the rule and in state and federal laws will remain in effect.

Compare With Approaches Being Used by Federal Government

The training requirements in the existing rule duplicate federal requirements. With the proposed changes, the rule will be consistent with federal law.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

All surrounding states, including Michigan, Minnesota, Illinois and Iowa, let EPA implement the mobile air conditioner regulations. Any state-specific regulations must be at least as stringent as EPA's. With the proposed changes, Wisconsin's regulations will be consistent with the EPA regulations applied in surrounding states.

Comments Received in Response to Web Posting and DATCP Response

DATCP received no comments in response to the web posting.

